RICHARD DOYLE, City Attorney (#88625) 1 GEORGE RIOS, Assistant City Attorney (77908) ROBERT FABELA, Sr. Deputy City Attorney (148098) IT IS SO ORDERED Office of the City Attorney 200 East Santa Clara Street 3 San José, California 95113-1905 Telephone Number: (408) 535-1900 Facsimile Number: (408) 998-3131 4 Judge James Ware 5 E-Mail Address: cao.main@sanjoseca.gov 6 Attorneys for CITY OF SAN JOSE 7 DISTRICT 8 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA 9 SAN JOSE DIVISION 10 11 JEFFREY WELCH, GLEN BISHOP, Case Number: C08-02132 JW MITCHELL WITSINSKI, ROBERT 12 CULBERTSON and other employees similarly situated, 13 STIPULATION AND [PROP Plaintiffs, 14 ORDER CONTINUING/THE CASE MANAGEMENT CONFERENCE ٧. 15 16 CITY OF SAN JOSE. 17 Defendants. 18 RELATED CASE: 19 Case No. C07-06424-JW JUAN DIAZ. KEITH KEESLING. CHRISTOPHER MURPHY, GARY 20 WEEKLEY, KAREN ALLEN and other employees similarly situated, 21 Plaintiffs. 22 VS. 23 CITY OF SAN JOSE. 24 25 Defendant. 26 **STIPULATION** 27 These case involve the claim by certain plaintiff firefighters that the City of San Jose

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has not made overtime payments to plaintiffs pursuant to the Fair Labor and Standards Act.

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The Welch, et al v. City of San Jose case was ordered related to the Diaz, et al. v. City of San Jose, case number C07-06424 JW on May 16, 2008.

The Court appointed Thomas Gosselin, Esq. as the early neutral evaluator in this matter *Diaz* matter before the Welch matter was ordered related. The parties engaged in an ENE session before Mr. Gosselin on July 21, 2008. At the end of session, it was determined that it would be most efficient for the parties and the court, and would more likely result in the informal resolution of this matter, were the parties to engage in another ENE session with Mr. Gosselin after having a reasonable opportunity to further study the scope of the damages being claimed by Plaintiffs under the Fair Labor Standards Act. The parties have also agreed to address this related case, *Welch v. City of San Jose*, at the second ENE.

The parties had agreed with Mr. Gosselin to conduct the next phase of the ENE session, which was to include both the *Diaz* and the *Welch* matter, on September 18, 2008. That ENE was postponed at the request of the City so that it could further explore the extent of the alleged damages and so that the City's legal counsel could consult with the City Council regarding possible resolution of the case. The ENE is set for October 30 with Mr. Gosselin.

The Case Management Conference in Welch v. City of San Jose is currently scheduled for October 20, 2008, ten days prior to the scheduled ENE. The next Case Management Conference in the Diaz matter is set for November 17, a date that occurs after the ENE. The parties agree that it would be more efficient and productive for both case to be discussed after the ENE session on October 20 and at the same Case Management Conference. Accordingly, the parties agree to continue the Welch Case Management Conference to November 17, 2008, pending approval from this Court.

WYLIE, MCBRIDE, PLATTEN & RENNER

By: /s/ Carol L. Koenig

Attorney for Plaintiffs, JUAN DIAZ, KEITH KEESLING, CHRISTOPHER MURPHY, GARY WEEKLEY, and KAREN ALLEN

Dated: October 15, 2008

1	RICHARD DOYLE, City Attorney
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3	Dated: October 15, 2008 By: /s/ Robert Fabela ROBERT FABELA
4	ROBERT FABELA Sr. Deputy City Attorney
5	Attorney for Defendant CITY OF SAN JOSE
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7	ATTESTMENT OF CONCURRENCE PER GENERAL ORDER 45 FOR FILING:
8	I attest that concurrence in the filing of this document by the signatories, Robert
9	Fabela and Carol L. Koenig, has been obtained, and that a record of the concurrence shall
10	be maintained at the Office of the City Attorney.
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13	Date: October 15, 2008 By: /s/ Robert Fabela ROBERT FABELA
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PROPOSED] ORDER

IT IS HEREBY ORDERED that the Case Management Conference in this matter shall be continued to November 17, 2008, at 10:00 a.m. On or before **November 7, 2008**, the parties shall file a Joint Case Management Statement. The Statement shall, among other things, update the Court on the parties' ENE efforts and include a good faith discovery plan with a proposed date for the close of all discovery.

Dated: October 16, 2008

JAMES WARE
United States District Judge